



Costs Decision

Hearing Held on 13 August 2019

Site visit made on 13 August 2019

by Christa Masters MA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th September 2019

Costs application in relation to Appeal Ref: APP/A2280/W/19/3227260 Plot 1, Medway City Estate, Anthony's Way, Frindsbury, Kent ME2 4DW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Location 3 Properties Ltd for a full award of costs against The Medway Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of retail development (Use Class A1) trade counter units (Use Class B8) and a drive-thru restaurant, together with associated access, servicing and infrastructure works, car parking and landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance states that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant's application was made verbally at the hearing. The appellant contends that the Council have failed to produce evidence to substantiate its reason for refusal, that the Council has made vague, generalised and inaccurate assumptions regarding the impact of the development which have not been supported by any objective analysis and that finally, the Council have not determined similar cases in a consistent manner. In its oral response to the cost's application, the Council advised that the previous proposals are not relevant to this proposal and that the Council has determined this appeal proposal on its own merits. The Council also contend that the application as submitted resulted in a position whereby the highways impacts of the proposal could not be determined and the appellants Statement of Case made no reference to highways matters.
4. Contrary to the views expressed by the Council, the appellants Statement of Case did cover highways matters (paragraph 6.4). Given the sites planning history and the failure of the Council to determine the application, this was a proportionate approach.

5. The application submission was supported by an extensive number of technical reports. These included a transport statement. It is clear to me that there has been an ongoing dialogue between the appellant and the Council's highways representative since the application was submitted. The suggestion that the highways impacts of the proposal could not be determined is not supported by any substantive evidence or objective analysis.
6. It is acknowledged by both parties that the site has a detailed planning history. In this respect, I concur with the Council's view that each application should be determined on its own merits. However, this needs to be done on a sound basis and substantiated by evidence.
7. In the circumstances of this appeal, there has been a distinct lack of evidence to support the reason for refusal and the Council have made generalised assertions about the proposals impact, which have not been supported by any objective analysis. The Council have failed to determine cases in a consistent manner. The Council has behaved unreasonably as a result.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Medway Council shall pay Location 3 Properties Ltd the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Medway Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Christa Masters

INSPECTOR